

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

FEB 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

Compatibility Between Cable Systems)
and Consumer Electronics Equipment)

ET Docket No. 93-7

REPLY COMMENTS OF
THE CONSUMER FEDERATION OF AMERICA
AND THE HOME RECORDING RIGHTS COALITION
ON THE NOTICE OF PROPOSED RULE MAKING

February 16, 1994

No. of Copies rec'd
List ABCDE

029

TABLE OF CONTENTS

TABLE OF CONTENTS	i
SUMMARY	ii
INTRODUCTION	1
I. BUST THE CABLE SYSTEM MONOPOLY ON SET-TOP BOXES FOR EXISTING AND FUTURE EQUIPMENT	3
A. Encourage Migration of Non-Security Functions into Competitive Equipment	5
B. Include Commercial Availability of Cable Boxes in Subscriber Education Programs	7
C. Cable Operators Must Freeze Their Infrared Codes for Remote Controls	8
D. No New Scrambling!	10
II. MAINTAIN CONSUMER VALUE IN FUTURE AND "CABLE- READY" EQUIPMENT	12
A. Don't Sabotage The Digital Interface	12
B. Not all TVs/VCRs Need Be "Cable-Ready"	14
CONCLUSION	15

SUMMARY

The Consumer Federation of America ("CFA") and the Home Recording Rights Coalition ("HRRRC") respectfully reply to the Federal Communications Commission December 1, 1993 Notice of Proposed Rule Making and previous Comments.

We are troubled that instead of moving away from set-top boxes, some industry comments and Commission proposals require more and different equipment which would continue to be controlled and supplied by cable operators. The overriding goal of this proceeding should be to eliminate the troublesome set-top boxes to the extent possible. To the extent set-top (or set-back) boxes are necessary or desired, this proceeding should foster an open, competitive market for these consumer devices.

We encourage migration of non-security cable functions into competitive consumer equipment. To this end, we support the Comments of Circuit City Stores, Inc. Cable providers that supply customer premises devices for signal security purposes ought to be required to offer a de-integrated security-only device, so that other features and functions can be offered by the competitive consumer electronics market, either as separate set-top devices or eventually integrated into television sets and VCRs.

Cable systems that offer set-top boxes should be required to implement a subscriber notification program regarding the availability from third-party retailers of

various types of converter boxes and other equipment to resolve compatibility problems or enhance services.

The Commission should prohibit cable providers from changing the infrared codes they use for remote controls if the new infrared codes will interfere with the operation of previously-compatible remote controls. Absent such a prohibition, new cable infrared codes could disable a remote control that was cable-compatible upon purchase; consequently, cable subscribers would be reluctant to purchase remote controls from independent retailers.

In reply to the proposed FCC prohibition on basic tier scrambling and the requested self-executing exception to this rule, we suggest a simple presumption: if the signal was not scrambled before the 1992 Cable Act, there is no need for the signal to be scrambled now or later. A heavy burden should be required to overcome this presumption.

We also urge the Commission not to allow some members of the cable industry to sabotage the Digital Interface connector. If all cable-ready TVs and VCRs must be equipped with a Decoder Interface connector, cable operators must provide all existing and future cable services compatibly.

Conversely, all new TVs and VCRs should not be required to meet the advanced cable-ready specifications. That would unnecessarily force all consumers, including those that do not subscribe to cable, to pay for a high-end Rolls Royce when a no-frills economy model could suffice.

DOCKET NO. 93-7

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEB 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 17 of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Compatibility Between Cable Systems)
and Consumer Electronics Equipment)
)

ET Docket No. 93-7

**REPLY COMMENTS OF
THE CONSUMER FEDERATION OF AMERICA
AND THE HOME RECORDING RIGHTS COALITION**

The Consumer Federation of America ("CFA") and the Home Recording Rights Coalition ("HRRRC") respectfully submit these reply comments on the Federal Communications Commission December 1, 1993 Notice of Proposed Rule Making ("NPRM") and the Comments previously submitted thereon.

INTRODUCTION

CFA is a federation of 240 pro-consumer organizations, which have a total of approximately 50 million individual members. Since 1968, CFA has represented the consumer interest before federal and state policymaking and regulatory bodies.

HRRRC was formed in 1981 in response to litigation that threatened to prohibit consumers from buying and using VCRs. HRRRC has continued to battle legislative, judicial, and regulatory challenges to consumers' use and control of audio and video recording equipment ever since.

Both the CFA and the HRRC share a longstanding concern for the interests and rights of consumers to enjoy the full benefits of both lawfully acquired electronics products and information/entertainment media. Both our organizations played an active role in promoting passage of the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act").^{1/} Both are concerned that some cable industry comments on the Commission's proposed rulemaking have removed the "Consumer Protection" and "Competition" from the Cable Act's mandate.

The purpose of Section 17 of the Cable Act was to control the cable monopoly and expand consumer choice over cable equipment. As Senator Leahy explained:

[T]he main thing that the absence of competition allows a monopoly to do is ignore the best interests of its customers. We all know that when competition is lively and vigorous, companies leapfrog each other to provide consumers the best and most user-friendly choices. Look at computers. Look at long distance telephone service. Look at televisions and VCR's. But when the consumer is captive, monopolies can do what is best for monopoly and let the customer be damned.

That is exactly what has happened in the world of cable equipment. . . .

138 Cong. Rec. S 583 (daily ed. Jan. 29, 1992).

Despite the clear intent to promote competition, the comments of certain cable systems and cable equipment providers distort the Cable Act, its legislative history, and its purpose in order to maintain their monopoly over

^{1/} Pub. L. No. 102-385, 106 Stat. 1460 (adding new section 624A to the Communications Act of 1934, codified at 47 U.S.C. § 544a).

cable equipment without regard for consumer interests. CFA and HRRC respectfully offer this reply.

I. BUST THE CABLE SYSTEM MONOPOLY ON SET-TOP BOXES FOR EXISTING AND FUTURE EQUIPMENT

Section 17(c)(2)(C) of the Cable Act requires the Commission to prescribe regulations necessary "to promote the commercial availability, from cable operators and retail vendors that are not affiliated with cable systems, of converter boxes and of remote control devices compatible with converter boxes." 47 U.S.C. § 544a(c)(2)(C) (emphasis added).

Somewhere along the way, this directive got lost.

Cable-company-supplied converter/descrambling boxes are the root cause of the cable compatibility problems that spawned Section 17 of the Cable Act. Many cable subscribers have no choice but to rent cable-company-selected set-top boxes from (who else) their local cable company. If the cable boxes supply only one descrambled channel at a time, they disable many of the premium recording and picture display features of subscribers' televisions and VCRs. The Cable Act found that if these problems persist, they will likely destroy the market for TVs and VCRs with new and innovative features and functions. Section 17(a)(2) of the Cable Act, 47 U.S.C. § 544a(a)(2).

We recognize that set-top boxes may serve different functions: improved tuning, frequency conversion,

security/descrambling, or some combination. We also recognize that set-top boxes soon may be needed for new digital decompression and digital conversion functions. And, cable subscribers may desire set-top boxes for enhanced features or services, such as advanced program guides, on-screen displays, interactive services, and the like. See Comments of General Instrument Corporation, ET Dkt. No. 93-7 (Jan. 25, 1994) ("GIC Comments"), at 3-5; Comments of Tele-Communications, Inc., ET Dkt. No. 93-7 (Jan. 25, 1994) ("TCI Comments"), at 3. Yet, we refuse to anoint cable systems as the sole source of advanced cable-converter-signal-descrambler-service-enhancer-digital-adapter devices.

We are troubled that instead of moving away from set-top boxes, some industry comments and Commission proposals require more and different equipment which would continue to be controlled and supplied by cable operators. The overriding goal of this proceeding should be to eliminate the troublesome set-top boxes to the extent possible. To the extent set-top (or even set-back) boxes are necessary or desired, this proceeding should foster an open and competitive market for these consumer devices. The Commission must move subscriber devices out of the cable-controlled monopoly and into the competitive consumer electronics market.

A. Encourage Migration of Non-Security Functions into Competitive Equipment

CFA and HRRC support the Comments of Circuit City Stores, Inc., ET Dkt. No. 93-7 (Jan. 25, 1994) ("Circuit City Comments"). We agree wholeheartedly with the "three basic principles" Circuit City suggested to foster a competitive market for consumer devices:

(1) Only functions directly and necessarily related to security should be reserved to system hardware/software provided by the cable operator;

(2) Functions that can be offered on a competitive basis must be available competitively, through the offer by the cable operator of compatible hardware or software modules that perform the security function only; and

(3) Cable operators should be allowed to charge separately for security modules and, to avoid extension of monopoly into competitive markets, should not be allowed to "bundle" the price of competitive hardware with services.

Circuit City Comments at 5.

The de-integration of the security function will enable the de-monopolization of existing and future cable devices. Circuit City aptly described a cable box "that performs: (a) security, (b) digital decompression, and (c) menus and program selection." Id. at 10. If the cable operator offers only this integrated multi-function box, consumers with advanced TVs or VCRs would be forced to pay for a digital decompression function that they do not need. Other consumers would be hoodwinked into paying for fancy menus and program selection features that they may not want. Consumers would have no option to obtain function (b) only

or function (c) only from a competitor, or both functions (b) and (c) at a more competitive price. See id.

We agree that cable providers that supply customer premises devices for signal security purposes ought to be required to offer a de-integrated security-only device, so that other features and functions can be offered by the competitive consumer electronics market, whether as separate set-top devices or eventually integrated into television sets and VCRs.^{2/} Id. Consumers should not be forced to order from a fixed combination platter when they would prefer to pick and choose à la carte.

Migration of non-security functions into competitive "boxes" will also ease consumers' foray into competing technologies and services. Continued cable company monopolization of multi-functional boxes will create a "technology bottleneck," because the cable monopoly on integrated boxes will endure even after viable alternatives for some services are available. Conversely, development of a competitive market for set-top boxes will build a strong

^{2/} Other Comments indicate that a modular system for signal security is both feasible and close at hand. One commenter, for example, described the imminent availability of a National Renewable Security System (NRSS) standard that would provide the signal security function through a "conditional access card." All security elements could be isolated to replaceable software provided by the cable operator; the hardware could be available to consumers in competitive set-top boxes or integrated in TVs or VCRs. Comments of Mitsubishi Electronics America, Inc., ET Dkt. No. 93-7 (Jan. 25, 1994), at 12-14; see also Reply Comments of The Titan Corporation, ET Dkt. No. 93-7 (Aug. 10, 1993), at 5-6; Comments of The Titan Corporation, ET Dkt. No. 93-7, (Jan. 25, 1994), at 5-6.

foundation for the National Information Infrastructure and the provision of competitive services by non-cable providers.

B. Include Commercial Availability of Cable Boxes in Subscriber Education Programs

Commenters in the cable industry have accepted their general responsibility to improve consumer education efforts regarding cable-compatible remote controls and other consumer equipment (although they question the specific requirements of such programs). E.g., TCI Comments at 7; Comments of Cablevision Systems Corp., ET Dkt. No. 93-7 (Jan. 25, 1994) ("Cablevision Comments"), at 8. This acknowledged responsibility should expressly and affirmatively include converter boxes. Cable systems that offer set-top boxes should implement a subscriber notification program regarding the availability from third-party retailers of various types of set-top boxes and other equipment that can resolve compatibility problems or enhance subscriber services.^{3/} This notification requirement could be satisfied in conjunction with the consumer education programs proposed for general

^{3/} We are not suggesting that cable operators provide information that would compromise their signal security. Cf. Cablevision Comments at 10-11. As noted in Section I(A) above, competitive converter boxes and related equipment available on the open market could require a separate security-only device or software to be supplied by the subscribers' cable system, or cable providers could descramble their signals outside the subscriber's home and then deliver them "in the clear."

compatibility matters and remote controls. See NPRM

¶¶ 15-16.

Tele-Communications, Inc. offered a three-pronged approach specifically for remote controls; Cablevision Systems suggested a similar three-step approach for consumer equipment generally. TCI Comments at 11-12, Cablevision Comments at 9. With little extra effort or cost imposed on cable companies, a "cable box" notification program could parallel and expand these proposals and provide specific information about competitive converter boxes as an alternative to operator-supplied equipment:

1. Cable systems offering converter boxes would be required, on an annual basis, to notify their subscribers that they may purchase a converter box and other supplementary equipment from any source that sells such devices rather than renting the device from the cable operator. The annual mailing would explain that third-party converter boxes and supplementary equipment are usually found in stores with a consumer electronics division, especially those that sell television sets.
2. The annual mailing would also specify the types and generic characteristics of third-party set-top boxes and supplementary equipment that are compatible with the cable system. The notice would encourage subscribers to call the cable operator to ask about the compatibility of particular third-party devices available on the open market.
3. Third-party set-top box manufacturers would be required to list on the product packaging the types of compatible remote controls.

C. Cable Operators Must Freeze Their
Infrared Codes for Remote Controls

As noted above, cable operators recognize both the competitive market for "universal" remote controls designed

to operate cable converter boxes (among other consumer equipment), and their responsibility to notify their subscribers about the availability of these remote controls as an alternative to operator-supplied devices. Yet, cable systems could easily frustrate this competitive remote control market and consumer education effort if they change the infrared codes which allow the remote controls to interact with cable converter boxes.

The Commission should prohibit cable providers from changing the infrared codes they use for remote controls if the new infrared codes will interfere with the operation of previously-compatible remote controls. Indeed, section 17(c) (2) (E) of the Cable Act requires the Commission to "prohibit a cable operator from taking any action that prevents or in any way disables the converter box supplied by the cable operator from operating compatibly with commercially available remote control units."

47 U.S.C. § 544a(c) (2) (E) .

Absent such a prohibition, new cable infrared codes could disable a remote control that was cable-compatible upon purchase. Given this incompatibility risk, cable subscribers would be reluctant to purchase remote controls from independent retailers. They would continue to be dependent on their local cable monopoly for their remote control supply.

D. No New Scrambling!

In response to the Commission proposal to prohibit cable systems from scrambling signals on the basic tier of cable service, NPRM ¶ 13, at least one commenter suggests an exception so that cable operators be allowed "to scramble/encrypt basic channels if they [the cable operators] determine that it is needed to protect against substantial theft of basic cable service." GIC Comments at 5-7 (emphasis added). If enacted, this self-executing exception would swallow the No Scrambled Basic Rule.

CFA and HRRC are concerned that cable operators will scramble basic and other signals that they previously provided "in the clear." In reply to the requested exception for new scrambling, we suggest a simple presumption: if the signal was not scrambled before the 1992 Cable Act, there is no need for the signal to be scrambled now or later. A heavy burden should be required to overcome this presumption. As CFA stated previously:

[T]he Commission [should] not permit . . . cable operators to require in-home de-scrambling equipment for any basic and expanded basic services that were sent in the clear as of the date of passage of the 1992 Cable Act. The Commission should also establish a procedure allowing for public comment, where an operator would have the burden of demonstrating that a significant security threat that did not exist prior to passage of the 1992 Cable Act now exists or that a new service offered as part of a regulated tier should not be offered in the clear.

CFA Comments, ET Dkt. No. 93-7 (Aug. 10, 1993), at 11. Cf. Cablevision Comments at 7-8 (similarly suggesting a

"grandfather" provision for operators that scramble the basic tier as of a date certain).

Proponents of expanded scrambling must demonstrate not just some piracy, but both (i) new and substantial piracy and (ii) no feasible security alternative, so as to justify scrambling. Furthermore, additional scrambling should be strictly limited to the individual channels with a proven record of significant theft (rather than scrambling the entire basic or expanded basic tier due to one problem egg).

Without such controls, cable providers may increase scrambling not because it is necessary, but because it would require subscribers to use cable-supplied descrambling devices and, in turn, to pay the cable provider increased fees.^{4/} Moreover, cable providers could use scrambling for strategic purposes in addition to purely security reasons; scrambling could be an easy excuse to require subscribers to rent top-of-the-line converter/descrambler boxes when a simpler descrambler would do.^{5/} Simply put, scrambling

^{4/} In supporting the cable equipment amendment to the 1992 Cable Act, then-Senator Gore observed that:

It is obvious what is going on here, cable operators don't like consumers having some control over the cable signal once it comes into their homes, so they plan to require that the consumer completely rewire his home and then rent a decoder box from the cable company, in some cases at an outrageous price.

138 Cong. Rec. S 584 (daily ed. Jan. 29, 1992).

^{5/} Upon introducing the Cable Ready Equipment Act of 1991, Senator Leahy commented:

(continued...)

results in expansion of cable monopoly and expansion of revenues.

II. MAINTAIN CONSUMER VALUE IN FUTURE AND "CABLE-READY" EQUIPMENT

A. Don't Sabotage The Digital Interface

When the Cable-Consumer Electronics Compatibility Advisory Group introduced the proposal to incorporate a new Digital Interface connector into new cable-ready television and VCR receivers, this seemed a feasible (if not particularly desirable) means to improve cable-compatibility for the next generation of consumer equipment. The presumption then was that all cable-ready receivers would be equipped with the Digital Interface connector, that cable operators would provide all signals through a special set-back decoder/descrambler device, and that, on balance, everyone (electronics manufacturers, cable providers, and cable subscribers) would be happy (or at least reasonably satisfied).

Now, some members of the cable industry shamelessly would turn the Digital Interface proposal into a meaningless

^{5/} (...continued)

[I]t is more and more evident to me that the main reason for converter boxes is that cable companies can charge for them. The fact that you bought a whole lot of equipment that you are not going to be able to use is immaterial to them as long as they are making money. The heck with whatever inconvenience it causes you[.]

137 Cong. Rec. S 18,378 (daily ed. Nov. 26, 1991).

sham.^{6/} In nearly verbatim passages, both Tele-Communications, Inc. and General Instrument Corporation claim that cable providers should be required to deliver only those cable services existing at the time the Decoder Interface connector specifications are adopted through the Decoder Interface; they assert that they should be free to provide later developed services through later developed technologies (i.e., more set-top boxes). GIC Comments at 18-22; TCI Comments at 21-24. The Decoder Interface connector would connect to nothing.

The cable industry cannot have it both ways, and require consumers to pay for a Digital Interface connector one day that some providers will render useless the next. If cable-ready TVs and VCRs must be equipped with a cable-compatible Decoder Interface connector, cable providers must provide Decoder Interface-compatible service.

The cable industry made a deal. They hand-picked the cards. The Commission should hold those that want to back away from the table and provide incompatible service to their Digital Interface deal. The Digital Interface connector is worthless without a sincere commitment that cable service will be provided in a compatible manner.

^{6/} The National Cable Television Association, in contrast, participated in developing the Cable-Consumer Electronics Compatibility Advisory Group's Digital Interface proposal, and continues to support this recommendation without qualification.

B. Not all TVs/VCRs Need Be "Cable-Ready"

Some cable industry commenters suggest that "the Commission should require all TVs and VCRs which tune cable channels to comply with all 'cable ready' specifications adopted in this proceeding." TCI Comments at 18-19 (emphasis added). A requirement that all TVs/VCRs be "cable-ready" is unreasonable and unnecessary. It would force consumers to pay for a high-end Rolls Royce when a no-frills economy model could suffice.

The argument that consumers would be confused unless all TVs and VCRs include high-performance (and high-priced) receivers is patronizing, unconvincing, and self-serving. This assertion would allow cable operators to abdicate their responsibility to educate and inform their customers (along with electronics manufacturers and retailers).

Moreover, the suggestion that Commission rules prohibit all advertising or marketing practices that lead consumers to believe that lower cost receivers are cable-ready is unnecessary. GIC Comments at 14. Adequate legal remedies for false or misleading consumer labelling and advertising are already on the books. Examples: the Federal Trade Commission Act, the Federal Lanham Act, state "baby" or "little" FTC acts.

Not all TV/VCR purchasers are cable subscribers. In fact, about four out of ten U.S. homes (39%) choose not to

subscribe to cable television service.^{7/} Accordingly, consumers should be free to select from sophisticated cable-ready TVs and VCRs that comply with advanced technical specifications and more affordable non-cable-ready TVs and VCRs that need not meet the same strenuous standards -- depending on each consumer's particular needs, desires, and pocketbook. Restricting consumers' ability to choose would be a disservice.

CONCLUSION

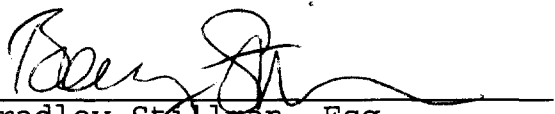
In implementing Section 17 of the Cable Act, the Commission has two choices. It can let the cable monopoly over cable boxes continue unfettered. Or, it can foster a competitive environment and expand consumer choice over cable and video equipment. As Senator Leahy surmised, competition will provide consumers with the best and most user friendly choices. Remember the history of the telephone industry. The development of computers. The success of televisions and VCRs. In all these markets, consumers can go to several competing suppliers and compare prices and product features; then, consumers can choose

^{7/} Approximately 60.8% of U.S. homes passed by cable actually subscribe to cable service; the remaining 39.2% choose not to subscribe to cable. TV Digest, June 7, 1993, at 4.


freely and intelligently whether they want to buy filet mignon or hamburger. The same should be true for the cable equipment industry.

Respectfully submitted,

CONSUMER FEDERATION OF AMERICA

By: 
Bradley Stillman, Esq.
Legislative Counsel
1424 16th Street, N.W., Suite 604
Washington, D.C. 20036
(202) 387-6121

HOME RECORDING RIGHTS COALITION

By: 
Ruth C. Rodgers
Executive Director
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8452

Dated: February 16, 1994